## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

TIFFANY DAVIS, SHUKRI ROBINSON,
and CRYSTAL LEWIS

Plaintiff,

v.

1:23-CV-131-RP

ALVERNA MCCULLOUGH and
ALOMEGA HOME HEALTH CARE, LLC,

Defendants.

## **ORDER**

Plaintiff Tiffany Davis ("Davis") filed this action on February 9, 2023. (Dkt. 1). On March 29, 2023, Davis moved for entry of default against Defendant Alomega Home Health Care, LLC ("Alomega"). (Dkt. 6). The Clerk entered default against Alomega on March 30, 2023. (Dkt. 7).

Davis then filed a motion for default judgment against Alomega on April 28, 2023. (Dkt. 8).

On May 30, 2023, Davis, along with Plaintiffs Shukri Robinson ("Robinson") and Crystal Lewis ("Lewis") filed their First Amended Complaint. (Dkt. 11). To date, Defendants Alomega and Alverna McCullough ("McCullough") have not appeared in this action. Accordingly, Plaintiffs moved for entry of default against both defendants. (Dkt. 15). The Clerk entered default as to both defendants on August 1, 2023. (Dkt. 16). Plaintiffs must now move for default judgment. *See* W.D. Tex. Loc. R. CV-55 ("If a defendant is in default, the court may require the plaintiff to move for entry of a default and a default judgment. If the plaintiff fails to do so within the prescribed time, the court may dismiss the action, without prejudice, as to the defendant.").

Federal Rule of Civil Procedure 55 governs the entry of default judgment. "Default under Rule 55 is a two-step process: (1) the entry of default and (2) the subsequent entry of a default judgment." *Can Capital Asset Servicing, Inc. v. Huerta, Jr.*, No. SA-15-CV-1049-XR, 2016 WL

8223267, at \*1 (W.D. Tex. Mar. 31, 2016) (citing Fed. R. Civ. P. 55). "An entry of default is what the clerk enters when the default is established by affidavit or otherwise. After defendant's default has been entered, plaintiff may apply for a judgment based on such default. This is a default judgment."

New York Life Ins. Co. v. Brown, 84 F.3d 137, 141 (5th Cir. 1996) (emphasis in original).

Here, Plaintiffs moved for *entry* of default against both Defendants on August 1, 2023, (Dkt. 15). The Clerk's Office entered default as to both Defendants on August 1, 2023. (Dkt. 16). Plaintiffs have yet to complete the second step in the process by moving for default judgment. Fed. R. Civ. P. 55(b).

Accordingly, **IT IS ORDERED** that Plaintiffs move for default judgment against Defendants on or before November 8, 2023.

SIGNED on October 18, 2023.

ROBERT PITMAN

1600 Mm

UNITED STATES DISTRICT JUDGE